MONTANA LEGISLATIVE HISTORY

Chapter 541 1999

Bill H _____ S 306 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3-15	✓ C	Hearing Date(s)	2-3	✓ C
	3-19	✓ C		2-15	✓ C
	_____	___ C		_____	___ C
	_____	___ C		_____	___ C
Date Out	_____	___ C			

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

4/17	Signed by President		
4/20	Signed by Speaker		
4/20	Transmitted to Governor		
4/30	Signed by Governor		
5/04	Chapter Number Assigned		
	Chapter Number 540		
	Effective Date: 10/01/1999 - All Sections		

SB 306 Introduced by Grimes, et al. *LC1117 Drafter: Fox*

Revise the Showing Required in an Affidavit in Support of a Motion for an Interim Parenting Plan;...

1/27	Introduced and 1st Reading		
1/27	Referred to Judiciary		
2/03	Hearing		
2/15	Committee Executive Action--Bill Passed as Amended	8	0
2/16	Committee Report--Bill Passed as Amended		
2/19	2nd Reading Passed	48	0
2/20	3rd Reading Passed	47	1
	Transmitted to House		
2/22	Referred to Judiciary		
3/15	Hearing		
3/19	Committee Executive Action--Bill Concurred as Amended	14	6
3/19	Committee Report--Bill Concurred as Amended		
3/29	2nd Reading Concurred	96	4
3/30	3rd Reading Concurred	90	9
	Returned to Senate with Amendments		
4/08	2nd Reading House Amendments Concurred	50	0
4/09	3rd Reading Passed as Amended by House	50	0
4/12	Sent to Enrolling		
4/13	Returned from Enrolling		
4/17	Signed by President		
4/20	Signed by Speaker		
4/20	Transmitted to Governor		
4/29	Signed by Governor		
5/04	Chapter Number Assigned		
	Chapter Number 541		
	Effective Date: 4/29/1999 - All Sections		

SB 307 Introduced by Grimes, et al. *LC1613 Drafter: Petesch*

Clarify That the State Lottery May Not Offer as a Lottery Game Any Game That Is Based on or Represents a Prohibited Form of Gambling;...

1/27	Introduced and 1st Reading		
1/27	Referred to Business and Industry		
1/27	Fiscal Note Requested		
2/01	Fiscal Note Received		
2/03	Fiscal Note Printed		
2/04	Hearing		
2/05	Tabled in Committee		
2/20	Taken from Committee; Placed on 2nd Reading	29	19
2/22	2nd Reading Pass as Amended Motion Failed	22	27
2/22	2nd Reading Indefinitely Postponed	26	23

Senate BILL NO. 306

INTRODUCED BY (Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CONTINUITY OF CARE IN PARENTING PLANS FOR CHILDREN IN CUSTODY PROCEEDINGS; AMENDING SECTIONS 40-4-212, 40-4-219, AND 40-4-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-212, MCA, is amended to read:

"40-4-212. **Best interest of child.** (1) The court shall determine the parenting plan in accordance with the best interest of the child. The court shall consider all relevant parenting factors, which may include but are not limited to:

(a) the wishes of the child's parent or parents;

(b) the wishes of the child;

(c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest;

(d) the child's adjustment to home, school, and community;

(e) the mental and physical health of all individuals involved;

(f) physical abuse or threat of physical abuse by one parent against the other parent or the child;

(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;

(h) continuity and stability of care;

(i) developmental needs of the child;

(j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which is considered to be not in the child's best interests;

(k) whether a parent has knowingly failed to financially support a child that the parent is able to support, which is considered to be not in the child's best interests;

(l) whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests. In making that determination, the court shall consider

evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to whether a parent or other person residing in that parent's household has been convicted of any of the crimes enumerated in 40-4-219(8)(b).

(m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment actions.

(2) A de facto parenting arrangement, in the absence of a prior parenting decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) A parenting plan action brought by a parent within 6 months after a child support action against that parent is vexatious.

(b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan or with dispute resolution provisions of the final parenting plan.

(c) The right to be designated as custodian of the child, as provided in 40-4-234(2)(a), and the right to designate the legal residence of the child pursuant to a parenting plan under 40-4-213 or 40-4-234 is granted to the parent who has provided most of the primary care during the child's life."

Section 2. Section 40-4-219, MCA, is amended to read:

"**40-4-219. Amendment of parenting plan -- mediation.** (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child ~~and~~ or the parent, that the amendment is necessary to serve the best interest of the child. ~~In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether~~, and that:

(a) the parents agree to the amendment;

(b) the child has been integrated into the family of the petitioner with consent of the parents;

(c) the child is 14 years of age or older and desires the amendment;

(d) one parent has willfully and consistently without good cause:

(i) refused to allow the child to have any contact with the other parent; ~~or~~

(ii) attempted or threatened to frustrate, ~~or~~ deny, or delay contact with the child by the other parent; or

(iii) violated a provision of the parenting plan;

(e) one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent; or

(f) the child's present environment seriously endangers the child's physical, mental, or emotional health and that the harm likely to be caused by a change of environment is outweighed by its advantages to the child.

(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(d) or (8).

(4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential schedule for parental contact with the child ~~and to apportion transportation costs between the parents~~.

(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.

(6) A parenting plan may be amended upon the death of one parent pursuant to 40-4-221.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 20 days from the notice to respond. If the parent who receives notice of objection fails to respond within 20 days, the parenting rights of that parent are suspended until further order of the court. If that parent

responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625.

(9) Except in cases of physical abuse or threat of physical abuse by one parent against the other parent or the child, or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action."

Section 3. Section 40-4-220, MCA, is amended to read:

"**40-4-220. Affidavit practice.** (1) Unless the parties agree to an interim parenting plan or an amended parenting plan, the moving party seeking an interim parenting plan or amendment of a final parenting plan shall submit, together with the moving papers, an affidavit setting forth facts supporting the requested plan or amendment and shall give notice, together with a copy of the affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, based on the best interests of the child, in which case it shall set a date for hearing on an order to show cause why the requested plan or amendment should not be granted.

(2) (a) A party seeking an interim parenting plan may request that the court grant a temporary

order providing for living arrangements for the child ex parte. The party shall make the request in the moving papers and shall submit an affidavit showing that:

(i) no previous parenting plan has been ordered by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary living arrangements for the child were as proposed by the moving party; or

(ii) although a previous parenting plan has been ordered, an emergency situation has arisen in the child's present environment that ~~is detrimental to the child's best interests~~ endangers the child's physical, mental, or emotional health and an immediate change in the parenting plan is necessary to protect the child.

(b) If the court finds from the affidavits submitted by the moving party that the interim parenting plan proposed by the moving party would be in the child's best interest under the standards of 40-4-212 ~~or~~ and that the child's present environment ~~is detrimental to the child's best interest~~ endangers the child's physical, mental, or emotional health and the child would be protected by the interim parenting plan, the court shall make an order implementing the interim parenting plan proposed by the moving party. The court shall require all parties to appear and show cause within 20 days from the execution of the interim parenting plan why the interim parenting plan should not remain in effect until further order of court."

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

- END -

SB 306 SPONSOR: Grimes, Duane SHORT TITLE: Revise showing required affidavit in support of motion for interim parentingplan
REFERRED ON: 01/27/1999 HEARD ON: 02/03/1999
EXECUTIVE ACTION: 02/15/1999 Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 05/04/1999 Chapter Number Assigned

SB 319 SPONSOR: Holden, Ric SHORT TITLE: Allow marriage discounts for auto insurance
REFERRED ON: 01/28/1999 HEARD ON: 02/04/1999
EXECUTIVE ACTION: 02/05/1999 Bill Passed as Amended -- VOTE: 5 - 4
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 320 SPONSOR: Holden, Ric SHORT TITLE: Prohibit noneconomic damages for uninsured driver and felons
REFERRED ON: 01/28/1999 HEARD ON: 02/04/1999
EXECUTIVE ACTION: 02/17/1999 Bill Passed as Amended -- VOTE: 6 - 3
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 328 SPONSOR: Ellingson, Jon SHORT TITLE: Prohibit discrimination based on sexual orientation
REFERRED ON: 01/29/1999 HEARD ON: 02/05/1999
TABLED ON: 02/16/1999
FINAL DISPOSITION 03/01/1999 (S) Missed Deadline for General Bill Transmittal

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SB 348 SPONSOR: Bartlett, Sue SHORT TITLE: Decriminalize municipal code violations
REFERRED ON: 01/30/1999 HEARD ON: 02/05/1999
EXECUTIVE ACTION: 02/09/1999 Bill Passed as Amended -- VOTE: 9 - 0
FINAL DISPOSITION 04/06/1999 Chapter Number Assigned

SB 357 SPONSOR: Stang, Spook SHORT TITLE: Allow gambling machines on county fairgrounds during fair
REFERRED ON: 01/30/1999 HEARD ON: 02/10/1999
TABLED ON: 02/12/1999
FINAL DISPOSITION 03/01/1999 (S) Missed Deadline for General Bill Transmittal

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SB 363 SPONSOR: Eck, Dorothy SHORT TITLE: Death penalty moratorium
REFERRED ON: 02/01/1999 HEARD ON: 02/10/1999
TABLED ON: 02/12/1999
FINAL DISPOSITION 03/01/1999 (S) Missed Deadline for General Bill Transmittal

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MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 3, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 273, 1/29/1999; SB 303, 1/29/1999; SB 306, 1/29/1999
Executive Action: None

HEARING ON SB 273

Sponsor: SEN. REINY JABS, SD 3, Hardin

Proponents:

SEN. BRUCE CRIPPEN, SD 10, Billings

{Tape : 1; Side : B; Approx. Time Counter : 10:26 a.m.}

HEARING ON SB 306

Sponsor: **SEN. DUANE GRIMES, SD 20, Clancy**

Proponents:

Miriam Luse, Attorney, Self
Kendra Neveras Self
Amy Pfeifer, Women's Law Section of the State Bar
Sharon Hoff, MT Christian Coalition

Opponents:

Vicki Knudsen, Self
Dr. Sarah Baxter, Clinical Psychologist in Missoula
Mike Smart, Cascade Co. Justice of Peace
Virginia Knight, Attorney in Bozeman
Corbin Howard, Attorney
Kerry Newcomer, Missoula Attorney
Mars Scott, Missoula Attorney

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, Clancy, gave some background on what happened to this bill last session dealing with parenting plans. He discussed the pros and cons of mediation. Last session this was a major plan to go from joint custody to parenting plan. His attempt with this bill is to make it easier on family and children and to decrease unnecessary litigation. He used the example of a young women who is on a parenting plan and the husband is very vindictive and controlling. There is nothing criminal going on, but scary as far as emotional abuse is concerned. He said on page 2 of the bill, they are making some changes concerning the best interest of the child. The custodian will be the one who has provided most of the primary care during the child's life. He discussed line 24, page 2, which eliminates the option of going back and determining best interest. This will help eliminate additional litigation. He discussed line 29, page 2, and page 3, line 1. He read line 6, page 3. He said they took out the serious endangerment part last session, but it should be put back in. He said they took this out because it was hard to define and could cause additional litigation. But there are certain areas that need this litigation. He said their concern last session was to give judges maximum latitude to judges and this still maintains that principle. He turned in letters of support. **EXHIBIT(6)**

{Tape : 2; Side : A; Approx. Time Counter : 10:41 a.m.}

Proponents' Testimony:

Miriam Luse, Attorney, Self, turned in testimony in favor of **SB 306. EXHIBIT(7)**

{Tape : 2; Side : A; Approx. Time Counter : 11:00 a.m.}

Kendra Neveras Self, said in 1997, her ex-husband got an order saying he was the primary care giver of the children and he got custody. At the time, the children where one and three and they had special needs. She said it was a year before this went to court and she got custody of her children again. However, during that time her children's needs were not met. Children need to be heard and their needs must be met.

Amy Pfeifer, Women's Law Section of the State Bar, said they believe continuity of care and stability in a child's life is important. Continuity of care is important in making initial arrangements in parenting of a child. It also should be important when a parent suggests a modification of residency that the child's needs are thought of. Requirement to show serious endangerment should be put back in and there should be higher standards for a change of residency. She said they should care more about the residency change of a child than child support issues.

Sharon Hoff, MT Christian Coalition, supported this bill.

Opponents' Testimony:

Vicki Knudsen, Attorney, Self, said the ideal family that they like to talk about is mom and dad happily living together, raising their children. This ideal family does not keep track on a daily basis which parent changed the baby's diaper, prepared the meals or changed the oil in the car. They don't keep track of buying groceries, who took them to the dentist, mowed the law, or gave the kids a bath, etc. Then one day the bottom falls out and the ideal family is no more. All the jobs that were described still have to be done in each household, but there is now two households and one parent to do everything. She said three years ago they changed family law to make it more workable. This bill will put back the very things that they worked to have taken out in 1997. There is no definition for primary care provider and it is very difficult to define. They want a family unit to work together. Traditionally men make more money than women and usually women only work part-time. If the father does the traditional jobs around the house, does he forfeit the right to

be considered the primary parent for the care of the children? If they are going to make primary care provider the basis of this, then aren't they teaching parents that they better keep track just in case they have to prove they are more capable than the other parent to be the primary care giver? The fact is that the younger children spend more time with their mother and the older children with their father. These children are entitled to two parents and to go back to the serious endangerment statute is getting into a property issue with these children. If there has to be a separation, encourage children to be with both parents. The issue of who didn't do the most work or why mom and dad got divorced is not important once the divorce takes place. The issue is do these children have a right to have both parents and do the parents have a right to start providing the things that they didn't when they were married. There are already 13 specific factors that are set out in section 212. The courts look at these when deciding what is in the child's best interest. She read page 2, line 24. She said in 1996 she represented a man to try and get modification of custody. The mother in three years had moved seven times and the children had changed schools five times. The father had moved once since the divorce. The children talked to the judge and their decision comes second after the parents if they are under 14. Women do not have enough power, control, or a lot of the good paying jobs, but lets not make up for that by letting them have total control of the children and treating them like property. Serious endangerment does not look at the best interest of the children. She said there is a provision to take out the apportionment of transportation. By taking this out they are inviting parents to move further and further away to legally separate the children from the other parent.

{Tape : 2; Side : A; Approx. Time Counter : 11:18 a.m.}

Dr. Sarah Baxter, Clinical Psychologist in Missoula, said everyday in her office she visits with children whose parents have been divorced. She said she sees a wide range of conflict level amongst families. Kids tell her over and over again that they want relationships with both of their parents. They also say they want safe and predictable lives. Children do psychologically, behaviorally and emotionally better when they have continued contact with both parents after the divorce. The parenting plan gives parents who are divorcing something to work toward, rather than presenting who is the best parent. They can now work out what is the best arrangement for their children. She said she has not seen one case in which something in the children's best interest was not implemented because of the current law. She also said there has not been one case in which the child had to remain in a dangerous situation because of the current language. She said if they go back to the children

staying with the primary care giver, they cannot focus on what those children actually need. Children's needs change as time evolves over time under these new family systems. She said if they return to the serious endangerment statute they encourage parents to accuse each other of mis-behavior and this affects children.

Mike Smart, Cascade Co. Justice of Peace, said he has handled over 3200 divorces and the legislation they passed in 1997 has been a major step into the 20th century. He said the main concern is for the child. He said they got rid of the serious endangerment statute last time and by putting it back in it eliminates options and closes doors. He said they can't change a child's situation until it seriously endangers their mental, physical and emotional health. No child deserves to be in a situation that is miserable. He discussed subsection 4. The judge needs maximum latitude and options of the situation that is in front of him. He referred to section 40-4-220.

Virginia Knight, Attorney in Bozeman, said she is a divorced parent and became her son's primary care giver when she was divorced. She said her son would like to live with both parents. She said if the legislature gives the court the awesome power of trying to decide who has been the primary care giver, it is difficult. She said she has a case in which the father lives in Colorado and the mother and children live in Montana. And the live in boyfriend beats the mother. Staying in this situation is not in the best interest of the children, but it would be difficult to prove if they went back to the serious endangerment law.

{Tape : 2; Side : B; Approx. Time Counter : 11:31 a.m.}

Corbin Howard, Attorney, rose in opposition of **SB 306. EXHIBIT(8)** He also turned in many letters of opposition. **EXHIBIT(9)**

{Tape : 2; Side : B; Approx. Time Counter : 11:45 a.m.}

Kerry Newcomer, Missoula Attorney, said custody matters should be on a level playing field and what is best for the children.

Mars Scott, Missoula Attorney, said it cost $120 to file an amendment to a parenting plan that is going to be contested. Since the new law has gone into effect, the clerk of district courts have been collecting these filing fees for any amendments to parenting plans. He said there are four counties that have had no contested amendments to parenting plans filed since the new law went into effect. He said the average is about one contested amendment per month per judge. He said these amendments have not

gone up since 1997. If they would let the current system work, they would see further reductions of these amendments and less litigations. He said if this law passed it would be impossible to make any amendments to a parenting plan. **EXHIBIT(10), EXHIBIT(11)**

Questions from Committee Members and Responses:

SEN. DOHERTY said since they made the changes in 1997 they have had less than two years to adopt the changes and why do they need to change this again. **SEN. GRIMES** said so much was changed last session, that for one example there is always another example on the other side. He said there are instances where power egocentric fathers are creating havoc in the lives of mothers and children. He said there are some areas that need some more work.

Closing by Sponsor:

SEN. GRIMES closed on **SB 306.**

{Tape : 2; Side : B; Approx. Time Counter : 11:55 a.m.}

HEARING ON SB 303

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents:

Steve Browning, MT Hospital Assoc.
Jerry Loendorf, MT Medical Assoc.

Opponents:

Al Smith, MT Trial Lawyers Assoc.
Richard Dicks, Self

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, referred to an amendment for the bill. **EXHIBIT(12)** He said the context of the bill is on page 4 that deals with liens for attorneys and the payment of medical services by an insurer to the hospital. He handed out a case document. **EXHIBIT(13)** This bill has to do with who gets paid for medical services, does the provider get paid first or does the attorney? The court determines what the attorney fees are and enforces that law. He passed out examples for **SB 303. EXHIBIT(14)**

{Tape : 2; Side : B; Approx. Time Counter : 12:03 p.m.}

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 15, 1999 at 10:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Sue Bartlett (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 404, SB 416, 2/12/1999
Executive Action: HB 41, SB 153, SB 251, SB 306, SB 416, SB 372

HEARING ON SB 404

Sponsor: **SEN. WALTER MCNUTT, SD 50, Sidney**

Proponents: **Keith Colbo, Montana Independent Bankers**
John Cadby, Montana Bankers Association

Opponents: **Mike Moore, Montana Collectors Association**

{Tape : 2; Side : A; Approx. Time Counter : 11.23}

EXECUTIVE ACTION ON SB 306

SEN. GRIMES asked that the amendments, SB030601.avl -**EXHIBIT(4)**, be segregated. He remarked that the concept of custodian was eliminated. The testimony during the hearing was that the problem with this is that parents were going to try to be good parents in order to be identified as a custodian. He added the language "prior to the separation of the parents." He believed that the mother who has spent all her time with the children, should probably have the children.

Motion: **SEN. GRIMES** moved that **SB 306 BE AMENDED BY STRIKING SECTION 1.**

Discussion:

SEN. GRIMES stated that this would be based on the best interests of the child rather than which parent the child lived with.

Vote: **The motion carried unanimously - 8-0.**

Motion: **SEN. GRIMES** moved that **SB 306 BE AMENDED - Amendment 11.**

Discussion:

SEN. GRIMES explained that his intention is that if there is serious endangerment to the child, this would be an issue parents could use to redetermine residency. The reason it was pulled out is that this is source of a lot controversy between parents. On page 3, Subsection (f) would be stricken from the bill.

Vote: **The motion carried unanimously - 8-0.**

Discussion:

SEN. GRIMES related that parents who are following the parenting plan, decide that they do not want to send their children back after summer has ended. They file an affidavit saying that it is in the child's best interest, based on their wishes, to stay with one parent when they enroll in school. The other parent is not able to do anything about it until halfway through the school year.

Ms. Lane conveyed that amendment no. 3 was found on page 2 of the marked up bill on page 2, line 20. The remaining lines on page 2 and also lines 1-8 on page 3, become (b).

SEN. GRIMES remarked that his major concern is that one parent could change the residency of a child by coercing the child to say that he would rather live with one parent rather than the other. This language allows for amending a parenting plan for anything contained in the best interest section on page 1. If the residency was to be changed, it would be necessary to stay with the language under 219, which begins on line 26, page 2. This creates a two-tier structure. He remarked that this caused some pause in the Family Law Section. Their concern was that we were moving too quickly.

Motion: **SEN. GRIMES** moved that **SB 306 BE AMENDED WITH AMENDMENTS 3, 4, 8 AND 10.**

Discussion:

Ms. Lane explained that current law stated that a court, in its discretion, may amend a prior parenting plan if it finds that changes have occurred, etc. As drafted, the qualifying subsections do not go to (a) they would only go to (b). The new (b) would say that a court cannot change a prior parenting plan in regard to residence. The new (b) would apply only to a change in residence and it would be necessary to meet the qualifiers that the parents agree, etc.

SEN. GRIMES added that, with regard to residency, the parent cannot use coercion of the child's wishes to reverse residency. This matches the Washington statute. There are different opinions within the Family Law Section in this area.

SEN. HALLIGAN remarked that the Family Law Section and the Women's Law Section were in conflict on this bill.

SEN. GRIMES added that he would be willing to strike this and live with the affidavit changes.

Vote: Motion **carried unanimously - 8-0.**

Motion/Vote: **SEN. GRIMES** moved that **SB 306 BE AMENDED BY STRIKING "OR THREATENED" AND "OR DELAY" ON PAGE 3, LINE 1. ON PAGE 3, LINES 14 AND 15, WOULD BE RETURNED TO THE ORIGINAL LANGUAGE. The motion carried unanimously - 8-0.**

Motion/Vote: **SEN. GRIMES** moved that **SB 306 DO PASS AS AMENDED. Motion carried unanimously - 8-0.**

SB 273 SPONSOR: Jabs, Reiny SHORT TITLE: Create 22nd judicial district & add judge to 11th & 20th districts
REFERRED ON: 02/16/1999 HEARD ON: 03/12/1999
EXECUTIVE ACTION: 03/23/1999 Bill Concurred -- VOTE: 17 - 3
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

SB 306 SPONSOR: Grimes, Duane SHORT TITLE: Revise showing required affidavit in support of motion for interim parentingplan
REFERRED ON: 02/22/1999 HEARD ON: 03/15/1999
EXECUTIVE ACTION: 03/19/1999 Bill Concurred as Amended -- VOTE: 14 - 6
FINAL DISPOSITION 05/04/1999 Chapter Number Assigned

SB 320 SPONSOR: Holden, Ric SHORT TITLE: Prohibit noneconomic damages for uninsured driver and felons
REFERRED ON: 03/02/1999 HEARD ON: 03/15/1999
TABLED ON: 03/19/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 326 SPONSOR: Tester, Jon SHORT TITLE: Revise law on privacy in communications
REFERRED ON: 02/16/1999 HEARD ON: 03/11/1999
EXECUTIVE ACTION: 03/23/1999 Bill Concurred as Amended -- VOTE: 11 - 9
TABLED ON: 03/22/1999
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned

SB 372 SPONSOR: Halligan, Mike SHORT TITLE: Revise certain family laws
REFERRED ON: 03/02/1999 HEARD ON: 03/22/1999
EXECUTIVE ACTION: 03/25/1999 Bill Concurred as Amended -- VOTE: 14 - 6
FINAL DISPOSITION 05/04/1999 Chapter Number Assigned

SB 404 SPONSOR: McNutt, Walter SHORT TITLE: Clarify exemption from execution for IRA
REFERRED ON: 03/02/1999 HEARD ON: 03/15/1999
EXECUTIVE ACTION: 03/22/1999 Bill Concurred -- VOTE: 19 - 1
FINAL DISPOSITION 04/07/1999 Chapter Number Assigned

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 15, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 404, SB 320, SB 306, SB 416 3/10/1999
Executive Action: None

{Tape : 1; Side : A; Approx. Time Counter : 460 - 550}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 133}
EXHIBIT(1)

Carson Strege, Montana People's Action
{Tape : 1; Side : B; Approx. Time Counter : 133 - 162}
Russell Hill, City Auditor's Office
{Tape : 1; Side : B; Approx. Time Counter : 162 - 203}

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 203 - 550}

Closing by Sponsor:

Senator Holden made closing statements.
{Tape : 2; Side : A; Approx. Time Counter : 0 - 92}

HEARING ON SB 306

Sponsor:

Senator Grimes presented SB 306.
{Tape : 2; Side : A; Approx. Time Counter : 92 - 230}

Proponents:

Mirium Luse, Attorney
{Tape : 2; Side : A; Approx. Time Counter : 230 - 371}
EXHIBIT(2)
EXHIBIT(3)
EXHIBIT(4)
EXHIBIT(5)

Susan Gobbs, Montana Legal Services
{Tape : 2; Side : A; Approx. Time Counter : 371 - 550}
EXHIBIT(6)

Mary Lund, self
{Tape : 2; Side : B; Approx. Time Counter : 0 - 36}
Kim Sickerson, self
{Tape : 2; Side : B; Approx. Time Counter : 36 - 76}
Micca Mitchell, self
{Tape : 2; Side : B; Approx. Time Counter : 76 - 96}
Rita Pickering, self and Guardian Ad Litem
{Tape : 2; Side : B; Approx. Time Counter : 96 - 124}
Paulette Kohman, mediator

{Tape : 2; Side : B; Approx. Time Counter : 124 - 198}
Holly Franz, Women's Law Section
{Tape : 2; Side : B; Approx. Time Counter : 198 - 254}

Opponents:

Corbin Howard, Attorney
{Tape : 2; Side : B; Approx. Time Counter : 254 - 378}
EXHIBIT(7)
EXHIBIT(8)

Stephanie Bousleman, self
{Tape : 2; Side : B; Approx. Time Counter : 378 - 426}
EXHIBIT(9)

Sara Baxter, Clinical Psychologist
{Tape : 2; Side : B; Approx. Time Counter : 426 - 550}
John Summers-Flanagan, Clinical Psychologist
{Tape : 3; Side : A; Approx. Time Counter : 0 - 56}
Gail Galeen, Attorney
{Tape : 3; Side : A; Approx. Time Counter : 56 - 151}
Terry McCumber, Attorney
{Tape : 3; Side : A; Approx. Time Counter : 151 - 259}
EXHIBIT(10)

Informational Testimony:

None
Questions from Committee Members and Responses:

{Tape : 3; Side : A; Approx. Time Counter : 259 - 550}
{Tape : 3; Side : B; Approx. Time Counter : 0 - 394}

Closing by Sponsor:

Senator Grimes made closing statements.
{Tape : 3; Side : B; Approx. Time Counter : 394 - 550}

HEARING ON SB 416

Sponsor:

Senator Grosfield presented SB 416.
{Tape : 4; Side : A; Approx. Time Counter : 0 - 66}

Proponents:

EXECUTIVE ACTION ON SB 179

Motion/Vote: REP. WYATT moved that SB 179 BE CONCURRED IN. Motion carried 17-3 with Hurdle, Jore, and McGee voting no.
{Tape : 3; Side : A; Approx. Time Counter : 0 - 49}

EXECUTIVE ACTION ON SB 306

Motion: REP. CURTISS moved that SB 306 BE CONCURRED IN.
Motion/Vote: REP. ANDERSON moved that SB 306 BE AMENDED. Motion carried 18-2 with Curtiss and Younkin voting no.
Motion: REP. ANDERSON moved that SB 306 BE CONCURRED IN AS AMENDED.
Motion/Vote: REP. CURTISS moved that SB 306 BE AMENDED. Motion failed 5-15.
Motion/Vote: REP. ANDERSON moved that SB 306 BE CONCURRED IN AS AMENDED. Motion carried 14-6 with Curtiss, Jore, Molnar, Noennig, Soft, and Younkin voting no.
{Tape : 3; Side : A; Approx. Time Counter : 49 - 303}

EXECUTIVE ACTION ON SB 320

Motion: REP. YOUNKIN moved that SB 320 BE CONCURRED IN.
Motion/Vote: REP. ANDERSON moved that SB 320 BE AMENDED. Motion carried 15-5 with Gallus, Gutsche, Hurdle, Williams, and Wyatt voting no.
Motion: REP. CLARK moved that SB 320 BE CONCURRED IN AS AMENDED.
Motion: REP. ANDERSON moved that SB 320 BE AMENDED.
Substitute Motion/Vote: REP. MOLNAR made a substitute motion SB 320. Substitute motion carried 15-5 with Anderson, Curtiss, Kitzenberg, Shockley, and Younkin voting no.
Motion: REP. GALLUS moved that SB 320 BE CONCURRED IN AS AMENDED.
Motion: REP. EGGERS moved that SB 320 BE AMENDED.
Motion/Vote: REP. NOENNIG moved that SB 320 BE TABLED. Motion carried 19-1 with Shockley voting no.

Meeting adjourned.

ADJOURNMENT

Adjournment: 11:39 A.M.